FCC 97-23

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter	)	
	)	
Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996	)	CC Docket No. 96-187
	)	
	)	

REPORT AND ORDER

Adopted: January 29, 1997 Released: January 31, 1997

By the Commission:

TABLE OF CONTENTS

I. INTRODUCTION

1. On February 8, 1996, the "Telecommunications Act of 1996" (1996 Act) became law.[1] The intent of this legislation is "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapid private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[2] This Report and Order adopts rules to implement section 402(b)(1)(A)(iii) of the 1996 Act, which adds section 204(a)(3) to the Communications Act.[3] This section provides for streamlined tariff filings by local exchange carriers (LECs). In the Notice of Proposed Rulemaking in this proceeding, we proposed measures to implement the tariff streamlining requirements of section 204(a)(3).[4] Twenty-nine parties filed comments and twenty-one filed replies.[5]

II. THE 1996 ACT

2. Section 402(b)(1)(A)(iii) of the 1996 Act adds new subsection 3 to section 204(a) of the Communications Act of 1934 (the Act):[6]

> (3) A local exchange carrier may file with the Commission a new or revised charge, classification, regulation, or practice on a streamlined basis. Any such charge, classification, regulation, or practice shall be deemed lawful and shall

---

[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 *to be codified at* 47 U.S.C. §§ 151 *et seq.* (Hereinafter, all citations to the 1996 Act will be to the 1996 Act as it will be codified in the United States Code.) The 1996 Act amended the Communications Act of 1934 (Communications Act).

[2] *See* Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. Preamble (1996) (Joint Explanatory Statement); *see also* 47 U.S.C. § 706(a) (encouraging the deployment of advanced telecommunications capability to all Americans). Senator Robert Dole, sponsor of the amendments, stated on the Senate floor when these provisions were first proposed that they would "[s]peed up FCC action for phone companies by making any revised charge that reduces rates effective seven days after it is filed. Rate increases will be effective fifteen days after submission. To block such changes, the FCC must justify its actions." *See* 141 Cong. Rec. S7926-27 (June 7, 1995) and 141 Cong. Rec. S7898 (June 7, 1995) (statement of Sen. Dole).

[3] 47 U.S.C. § 204(a)(3).

[4] *See In re* Implementation of Section 402(1)(A) of the Telecommunications Act of 1996, Notice of Proposed Rulemaking, CC Docket No. 96-61, 11 FCC Rcd 11233 (1996), 61 Fed. Reg. 49987 (Sept. 24, 1996) (Notice).

[5] Appendix A contains a list of the parties that filed comments and/or reply comments.

[6] 47 U.S.C. 204(a).

be effective 7 days (in the case of a reduction in rates) or 15 days (in the case of an increase in rates) after the date on which it is filed with the Commission unless the Commission takes action under paragraph (1) before the end of that 7-day or 15-day period as is appropriate.[7]

Section 402 of the 1996 Act also amends section 204(a) of the Act to provide that the Commission shall conclude any hearings initiated under this section within five months after the date the charge, classification, regulation, or practice subject to the hearing becomes effective.[8] Section 402(b)(4) of the 1996 Act provides that these amendments shall apply to any charge, classification, regulation, or practice filed on or after one year after the date of enactment of the Act, *i.e.*, February 8, 1997.[9]

3. Under the 1996 Act, a LEC is defined as "any person that is engaged in the provision of telephone exchange service or exchange access."[10] A LEC "does not include a person insofar as such person is engaged in the provision of commercial mobile radio service under section 332(c), except to the extent that the Commission finds that such service should be included in the definition of such term."[11]

III. STREAMLINED LEC TARIFF FILINGS UNDER SECTION 402 OF THE 1996 ACT

A. Commission Authority Under the 1996 Act to Defer LEC Tariffs Eligible for Streamlined Treatment

a. Background

4. In the Notice, we stated that by adopting section 204(a)(3) Congress intended

---

[7] 1996 Act, § 402(b)(1)(A)(iii).

[8] 47 U.S.C. § 204(a)(2)(A).

[9] 1996 Act, § 402(b)(4).

[10] 1996 Act, § 3(a)(44).

[11] *Id.* In the proceeding to adopt rules to implement sections 251 and 252 of the 1996 Act, we declined to extend the definition of LECs to commercial mobile radio service providers. *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 FCC Rcd 15499 (1996) (*Local Competition Order)* at para. 1004, Order on Reconsideration *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 FCC Rcd 13042 (1996) (*Local Competition Reconsideration Order), petition for review pending sub nom. and partial stay granted, Iowa Utilities Board et. al v. FCC*, No. 96-3321 and consolidated cases (8th Cir., Oct. 15, 1996).

to streamline LEC tariff filings by providing that they would become effective within seven or fifteen days notice unless suspended and investigated by the Commission.[12] Section 203(b)(2) of the Act,[13] however, provides that the Commission may defer the effective date of tariffs for up to 120 days. In the Notice, we tentatively concluded that Congress intended to foreclose the exercise of our general deferral authority under section 203(b)(2) of the Act with respect to the tariffs eligible for streamlined treatment.[14] We solicited comment on this tentative conclusion.

b. Comments

5. ALLTEL Telephone Services Corporation (ALLTEL), Ameritech, Bell Atlantic, BellSouth Corp. (BellSouth), Cincinnati Bell Telephone (CBT), GTE Services Corp. (GTE), NYNEX Telephone Companies (NYNEX), Pacific Telesis Group (Pacific Telesis), Southwestern Bell Telephone Company (SWBT), United States Telephone Association (USTA), and US West, Inc. (US West) agree with the tentative conclusion set out in the Notice that the Commission does not have discretion to defer for up to 120 days tariffs that LECs may file under the new streamlining provisions.[15] GTE asserts that granting the Commission such discretion would enable competitors to continue to use the tariff review process to delay implementation of LEC pricing changes, a result that GTE contends would be contrary to Congressional intent to accelerate the tariff review process.[16] NYNEX asserts that the Commission's deferral authority is derived from section 203(b)(1) of the Act while section 204(a)(3) provides for streamlined tariff filings. NYNEX concludes that, because there is no provision in section 204(a)(3) for deferring streamlined tariffs, Congress did not intend the deferral authority in section 203 to be applicable to tariffs filed pursuant to section 204.[17] In contrast, AT&T Corp. (AT&T), America's Carrier Telecommunications Association (ACTA), and Telecommunications Resellers Association (TRA) contend that the 1996 Act does not affect the Commission's authority to defer LEC tariff filings.[18] According to AT&T, Congress could not have intended to preclude the Commission from deferring tariff filings made by monopoly LECs while retaining the authority to defer tariff filings made by carriers

[12] Notice at para. 6.

[13] 47 U.S.C. § 203(b)(2)

[14] Notice at para.6.

[15] *See, e.g.*, Ameritech Comments at 5; GTE Comments at 7; NYNEX Comments at 8.

[16] GTE Comments at 7-8.

[17] NYNEX Comments at 8. *See also* BellSouth Comments at 4.

[18] AT&T Comments at 3; ACTA Comments at 1-4; TRA Comments at 6.

who face significant competition.[19] MCI Communications Corporation (MCI) states that the Commission's deferral authority is foreclosed only for rate increases and decreases and that the Commission may continue to exercise its deferral authority for all other LEC tariffs.[20] The General Services Administration (GSA) contends that the Commission retains its deferral authority because Congress did not amend section 203(b)(1).[21]

c. Discussion

6. Neither the statute nor the legislative history to the 1996 Act directly addresses whether Congress intended to foreclose our exercise of deferral authority with respect to LEC streamlined tariffs. We conclude that the more recent and specific provisions of the 1996 Act take precedence over our general deferral authority in section 203. We believe continued application of the general deferral authority contained in section 203 to LEC tariffs filed on a streamlined basis under the specific provisions set out in new section 204 (a)(3) would be contrary to Congressional intent. Accordingly, we adopt our tentative conclusion in the Notice that we may not defer LEC tariffs filed under the tariff streamlining provisions of the 1996 Act.

B. Effect of Streamlined LEC Tariff Filings Being "Deemed Lawful"

a. Background

7. Section 204(a)(3) of the Act provides that LEC tariffs filed on a streamlined basis "shall be deemed lawful."[22] The 1996 Act and the legislative history are silent regarding the specific legal consequences of this provision.[23] In the Notice, we tentatively concluded that, by specifying that LEC tariffs shall be "deemed lawful," Congress intended to change the current regulatory treatment of LEC tariff filings. The Commission set forth two possible interpretations of "deemed lawful."[24]

8. Under the first interpretation, a tariff that becomes effective without suspension and investigation would be a "lawful" tariff. It could subsequently be found unlawful in a

---

[19] AT&T Comments at 3.

[20] MCI Comments at 2.

[21] GSA Reply Comments at 9.

[22] 47 U.S.C. § 204(a)(3).

[23] See para. 4, *supra*.

[24] Notice at paras. 8-14.

rate prescription proceeding under section 205, or in a complaint proceeding under section 208. The Commission, however, could not award refunds or damages for the time that the rate was in effect but could only order tariff revisions or award damages on a prospective basis. This would differ radically from the current practice, where a rate that goes into effect without suspension and investigation is the "legal" rate, leaving carriers liable for damages, for the time the tariff was in effect, subject to the applicable two-year statute of limitations set out in section 415(a) of the Act,[25] if the tariff is subsequently found unlawful.

9. Under the second interpretation, the statutory language would be construed to establish higher burdens for suspension and investigation by presuming LEC tariffs lawful. Under this interpretation, the statutory language "unless the Commission [suspends and investigates the tariff] before the end of that 7-day or 15-day period," would not apply to the "deemed lawful" phrase, but only to the "shall be effective" phrase of section 204(a)(3). We noted in the Notice that Congress did not otherwise amend the statutory scheme for tariffs filed by interstate communications common carriers.[26] Therefore, the Commission or parties to a tariff proceeding could rebut the presumption of lawfulness in the truncated pre-effective tariff review process established by the 1996 Act. Tariffs would still be subject to complaint and/or investigation, and refunds or damages could be awarded for any time that the tariff was in effect, subject to the applicable statute of limitations. [27]

10. We also solicited comment on other possible interpretations of "deemed lawful." We stated in the Notice that we would adopt the interpretation that would best implement the intent of the 1996 Act's tariff streamlining provisions. We also solicited comment on the impact of these interpretations of "deemed lawful" on small entities, both LECs and other small entities, that might be customers of LEC tariffed services. In particular, we solicited comment on the relative burdens that would be imposed on small entities by possible interpretations of "deemed lawful."[28]

b. Comments

11. The LECs and USTA support adoption of the first interpretation of "deemed lawful."[29] They favor the position that tariffs filed on a streamlined basis are lawful unless the Commission takes action prior to the effective date of the tariffs and that retroactive

---

[25] 47 U.S.C. § 415(a).

[26] Notice at para. 13.

[27] *Id.* at para 12.

[28] *Id.* at para. 15.

[29] *See, e.g.,* Bell Atlantic Comments at 6; BellSouth Reply Comments at 4-5; USTA Comments at 4.

damage awards for successful challenges to LEC tariffs are prohibited by the 1996 Act. According to these parties, this interpretation of "deemed lawful" is consistent with the precedent established in *Arizona Grocery*.[30] There the U.S. Supreme Court held that a tariff rate that is allowed to become effective is considered the "legal" rate, that is, the rate that the carrier is required to collect and the customer to pay under the filed rate doctrine.[31] The lawfulness of an effective rate, however, remains subject to challenge either pursuant to a section 204(a)(1) hearing, a complaint proceeding initiated pursuant to section 208 of the Act, or an investigation established under section 205 of the Act. If, after completion of one of these proceedings, the Commission determines that some element of the effective tariff is unlawful, the Commission may order the filing carrier to pay damages, pursuant to section 207 of the Act, on a prospective basis only. The Supreme Court, these commenters point out, has held that an agency generally may not retroactively subject a carrier to refund liability if the agency subsequently declares the tariff rate to be unreasonable.[32]

12. Furthermore, these commenters maintain that Congress intended to alter the regulatory treatment for LEC tariff filings by adjudging streamlined LEC filings lawful by operation of the statute without need for a regulatory hearing and determination.[33] BellSouth, for example, argues that, if the Commission does not exercise its discretion to suspend and investigate a LEC tariff filing, then the statute deems the filing to be lawful upon its effective date. In addition, BellSouth maintains that the statute confers upon the tariff the same status that previously could only be acquired through a Commission determination or adjudication.[34] Pacific Telesis argues that, in determining Congressional intent, the starting point is the text of the statute and that, where as here, the statute is clear, no further inquiry is needed. According to Pacific Telesis, the phrase "shall be deemed lawful" expressly mandates that a filed tariff be treated, by operation of law, as lawful at the time of filing. It further states that the next phrase, "and shall be effective," states a separate requirement regarding the time within which the tariff applies and therefore any consideration by the Commission of the tariff, even in the pre-effective period, must recognize this lawful status.[35] SWBT argues that the "shall be deemed lawful" language of the 1996 Act limits any subsequent Commission review of a section 208 complaint challenging a LEC tariff filed on a streamlined basis. According to SWBT, the complainant in a section 208 proceeding would have the

---

[30] Arizona Grocery Co. v. Atchison, T & S.F. Railway, Co., 284 U.S. 370 (1932) (*Arizona Grocery*).

[31] *Id.* at 384.

[32] *Id.* at 389-90.

[33] *See, e.g.*, Pacific Telesis Comments at 3; Ameritech Comments at 6; US West Comments at 4.

[34] BellSouth Comments at 4-5.

[35] Pacific Telesis Comments at 3.

insurmountable burden of overcoming the Commission's prior determination that the tariff is lawful.[36] Thus, SWBT believes that a tariff revision that becomes effective under the streamlined procedures would be the lawful rate until the Commission concluded in a section 205 proceeding that a different charge, classification, or regulation would be lawful in the future.[37] In addressing the question of limitation on damages, NYNEX asserts that several factors should minimize customers' concern about possible overcharges. NYNEX maintains that the Commission still has the authority to suspend and investigate a tariff that appears unlawful and to impose an accounting order. According to NYNEX, this action should serve to protect customers' rights to obtain damages if the tariff is later found to be unlawful at the conclusion of an investigation. In addition, NYNEX contends that, even if an unlawful tariff has gone into effect, a five-month time limit on investigations and complaint proceedings imposed by the 1996 Act will limit the time during which potentially unlawful rates would be in effect. Finally, NYNEX points out that, with increased competition, customers will have other choices if a LEC attempts to charge unlawful rates.[38] USTA supports adoption of the first interpretation of "deemed lawful," arguing that the statutory language provides that tariffs filed on a streamlined basis shall be deemed lawful unless the Commission takes action pursuant to section 204(a)(1).[39]

13. The remainder of the commenting parties oppose adoption of the first interpretation of "deemed lawful."[40] They are concerned that customers would be precluded from recovering damages for overpayments where a tariff was later found to be unlawful.[41] MFS states that the first interpretation would create a "perverse incentive" for LECs to overcharge because they would be allowed to continue to collect such payments for the duration of any later tariff investigation or complaint proceeding. The only burden on the LECs would be defending their position in a complaint or investigation proceeding.[42] Ad Hoc Telecommunications Users Committee (Ad Hoc) states that the LECs' analysis of the first interpretation of "deemed lawful" overlooks the Communications Act requirement that carrier rates be just and reasonable and that consumers be protected from unjust and unreasonable rates. Furthermore, Ad Hoc maintains that, contrary to the LECs' position, customers are not

---

[36] SWBT Comments at 4.

[37] *Id.* at 3.

[38] NYNEX Comments at 11.

[39] USTA Comments at 3.

[40] *See, e.g.*, MCI Reply Comments at 5-6; AT&T Reply Comments at 3-4; MFS Communications Co. (MFS) Comments at 7-8.

[41] *See i.e.*, AT&T Comments at 7-8; Ad Hoc Comments at 2.

[42] MFS Comments at 7.

protected from unlawful rates due to the availability of other options because the marketplace has yet to reach a competitive state.[43] In addition, MCI, AT&T, and GSA contend that this interpretation must be rejected because Congress gave no indication that it intended to limit customers' remedies.[44]

14. GSA notes that, in the Notice, the Commission recognized that the Act and its legislative history do not provide an explanation of the term "deemed lawful." According to GSA, it would be unreasonable for the Commission to adopt the first interpretation of "deemed lawful" absent a clear indication that Congress intended to make a fundamental change to the regulatory framework for LEC tariffs. GSA argues as well that Congress made no corresponding changes to other sections of the Act designed to assure that LEC rates are reasonable,[45] and that this interpretation of section 204(a)(3) would appear to be in conflict with these sections. GSA maintains that, without changes to these sections, Congress could not have intended this radical departure from existing tariff regulatory procedures.[46] Capital Cities/ABC, Inc., CBS, Inc., National Broadcasting Company, Inc., and Turner Broadcasting System, Inc. (CapCities) contend that the new section 204(a)(3) of the Act does not modify the long-standing statutory scheme of pre-effective tariff review by the Commission on its own initiative or upon complaint of interested parties, and potential refunds if carrier tariffs which have been allowed to become effective are found unlawful after investigation and opportunity for hearing. Rather, CapCities argues, section 204(a)(3) serves to extend formally to dominant LECs a variation of the streamlined tariff filing mechanism that the Commission has applied in various forms to other tariff filings.[47]

15. The other non-LEC parties likewise support the adoption of the second interpretation of "deemed lawful." AT&T, for example, contends that the purpose of the "deemed lawful" provisions is to establish a presumption of lawfulness for the relevant tariffs during pre-effectiveness review. AT&T contends that this presumption is, as the Notice suggests, analogous to that accorded to LEC rate filings that are within applicable price cap limits, or to filings by non-dominant carriers under section 1.773 of the Commission rules.[48]

---

[43] Ad Hoc Reply Comments at 3. Sprint Corp. (Sprint) made a similar argument. Sprint Reply Comments at 2-3.

[44] MCI Comments at 9; AT&T Comments at 7; GSA Comments at 4.

[45] 47 U.S.C. §§ 203, 205, 207, and 208. These sections concern the Commission's authority to ensure that all rates, including LEC rates, are just, reasonable, and non-discriminatory, to prescribe rates, and to act on complaints filed against LEC tariffs.

[46] GSA Comments at 3- 4; GSA Reply Comments at 4. *See also* CapCities Comments at ii.

[47] CapCities Comments at 2-4.

[48] 47 C.F.R. § 1.773.

Therefore, AT&T maintains that tariffs filed pursuant to Section 204(a)(3) should not be suspended unless a petitioner makes a showing similar to the four-part test required under section 1.773.[49] Moreover, AT&T contends that, because incumbent LECs[50] retain significant market power and therefore are more likely than carriers facing competition to charge unreasonable rates, petitioners challenging a tariff filed pursuant to section 204(a)(3) should be required to show only that it is "more likely than not" that the disputed tariff is unlawful, rather than "a high probability" that the tariff will be found unlawful. Accordingly, AT&T argues that, because of the LECs' market position, petitions challenging their tariffs should have a lower threshold showing than petitions filed against tariffs proposed by nondominant carriers.[51]

16. MFS takes a position similar to AT&T, claiming that the Commission should adopt rules that presume section 204(a)(3) filings are lawful and assign the burden of proof to those wishing to challenge the lawfulness of the filing.[52] Sprint Corp (Sprint) maintains that the second interpretation is "clearly the correct one."[53] Sprint also states that there is nothing in the statute itself nor in the legislative history that indicates a Congressional intent to overturn well established precedent that holds that an effective tariff establishes only the legal rate and not the lawful rate, citing *Arizona Grocery*.[54]

17. With respect to how the Commission should interpret "deemed lawful," KMC Telecom Inc. (KMC), ACTA, TRA and SWBT discussed the effect the Commission's decision would have on small entities.[55] KMC opposes adoption of the first interpretation of "deemed lawful" because it states that such a finding would render the pre-effective tariff

---

[49] Under section 1.773 of the rules, for example, price cap carriers tariffs are considered *prima facie* lawful and will not be suspended unless a petitioner shows: (1) a high probability that the tariff would not be found unlawful; (2) that the suspension would not substantially harm interested parties; (3) that irreparable injury would not result if the tariff is not suspended; and (4) that the suspension would not be contrary to the public interest.

[50] An incumbent LEC is defined as a LEC that was either providing telephone service, or a member of an exchange carrier association pursuant to section 69.66(b) of the rules, or a person that become a successor or assignee to such member, as of the date of enactment of the 1996 Act. *See* Section 251(h) of the Act, 47 U.S.C. § 251(h).

[51] AT&T Comments at 7-8.

[52] MFS Comments at 8.

[53] Sprint Comments at 3.

[54] *Id.*

[55] *See*, ¶ 12-18, *infra*.

review process meaningless for small competitors because it would be nearly impossible for them to monitor and review all LEC tariff filings sufficiently to overcome any presumption of lawfulness within the limited time period for filing petitions. KMC further states that, if the deadline for opposing tariffs is missed, then the only relief available is the filing of a formal complaint, which involves a lengthy and costly process that is not a practical remedy for a small company.[56] ACTA states that, as a practical matter, precluding damages as a remedy will endanger the viability of small carriers because the LECs could litigate protested issues indefinitely without any threat of liability for damages.[57] TRA states that LECs should not be permitted to charge and retain unreasonable rates while being exempt from paying damages for such unlawful charges.[58] SWBT states that adoption of an interpretation of "deemed lawful" that would limit participation in review would not negatively impact small carriers because "their current participation in the tariff review process is rare, and ... Commission policy assumes that there is no need to allow for small entity/customer participation in the tariff filings of non-dominant carriers."[59]

c. Discussion

18. Based on our analysis of the statute in light of the record compiled in this proceeding and relevant judicial precedent, we adopt the first interpretation of "deemed lawful." In reaching this conclusion, we determine that this interpretation is compelled by the language of the statute viewed in light of relevant appellate decisions, and that our alternative approach outlined in the NPRM is not a permissible reading of this statutory provision.

19. The first step in statutory construction is to look at the language of the statute. In the Notice, we suggested that the statutory phrase, "deemed lawful," may be interpreted in two different ways. Appellate cases, however, have consistently found that the term "deemed," in this context, is not ambiguous.[60] Developed in the context of energy rate regulation, this precedent states that the term "deemed to be reasonable" must be read to

---

[56] KMC Comments at 6-7.

[57] ACTA Comments at 7.

[58] TRA Comments at 6.

[59] SWBT Comments at p. 5.

[60] *Municipal Resale Service Customers v. Federal Energy Regulatory Commission (FERC)*, 43 F.3d 1046, 1052 (6th Cir. 1995); *Ohio Power Company v. FERC*, 954 F.2d 779, 782 (D.C. Cir. 1992), *citing Gaither v. Myers*, 404 F.2d 216 (D.C. Cir. 1968); *Forrester v. Jerman*, 90 F.2d 412 (D.C. Cir. 1937); *H.P. Coffee Co. v. Reconstruction Finance Corp.*, 215 F.2d 818, 822 (Emer. Ct. of App. 1954).

establish a conclusive presumption of reasonableness.[61] In addition, we note that in this context the courts have explained that, while a rate contained in a properly filed tariff is the legal rate, a rate is "lawful" only if it is reasonable.[62] Accordingly, we conclude that, because section 204(a)(3) uses the phrase "deemed lawful," it must be read to mean that a streamlined tariff that takes effect without prior suspension or investigation is conclusively presumed to be reasonable and, thus, a lawful tariff during the period that the tariff remains in effect. For the reasons discussed below, we do not find, however, that the Commission is precluded from finding, under section 208, that a rate will be unlawful if a carrier continues to charge it during a future period or from prescribing a reasonable rate as to the future under section 205. Given the unambiguous meaning of the term "deemed lawful," we see no reason to resort to the legislative history (although there is none on point) in concluding that this term denotes a conclusive presumption.[63] In light of this statutory language as viewed under relevant appellate case law, we find that this interpretation is required in order to give effect to the language of the statute and therefore decline to adopt the alternative interpretation suggested in the Notice.[64] We find further, however, that the "deemed lawful" language does not govern streamlined tariff filings that become effective after suspension in those instances where the Commission suspends and initiates an investigation of a LEC tariff within the 7 or 15 day notice periods specified in section 204(a)(3). In those cases, the LEC streamlined tariffs would not be "deemed lawful" under section 204(a)(3) because they were suspended and set for investigation. Rather, they would be "legal" until the Commission concluded an investigation and made a determination as to their lawfulness. The lawfulness of such tariffs would be determined by the orders issued by the Commission at the conclusion of those proceedings.

20. We recognize that our interpretation of section 204(a)(3) will change significantly the legal consequences of allowing tariffs filed under this provision to become effective without suspension. Under current practice, a tariff filing that becomes effective

---

[61] In *Ohio Power Company v. FERC*, the court states that the "courts have been nearly unanimous in concluding that the word 'deemed,' when employed in statutory law establishes a conclusive presumption." 954 F.2d at 782. The Court followed this approach in overturning FERC's disapproval of the portion of an electric power company's wholesale rate adjustment covering purchase of fuel from an affiliate at a price approved by the Securities and Exchange Commission. The court held that FERC's action violated its own regulation requiring it to "deem to be reasonable and includable in the adjustment clause" prices subject to the jurisdiction of a regulatory body, because it failed to find the SEC-approved costs conclusively reasonable. *Municipal Resale Service Customers v. FERC*, also follows this analysis in interpreting the same FERC regulation. 43 F.3d 1046, 1052 (6th Cir. 1995).

[62] *Arizona Grocery*, *supra* at 384.

[63] *Darby v. Cisneros*, 113 S.Ct. 2539, 2545 (1993); *Connecticut Nat'l Bank v. German*, 112 S.Ct.1146, 1149 (1992).

[64] *Chevron USA, Inc. v. National Resource Defense Council*, 104 S.Ct. 2778 (1984).

without suspension or investigation is the legal rate but is not conclusively presumed to be lawful for the period it is in effect.[65] Indeed, if such a tariff filing is subsequently determined to be unlawful in a complaint proceeding commenced under section 208 of the Act, customers who obtained service under the tariff prior to that determination may be entitled to damages. In contrast, tariff filings that take effect, without suspension, under section 204(a)(3) that are subsequently determined to be unlawful in a section 205 investigation or a section 208 complaint proceeding would not subject the filing carrier to liability for damages for services provided prior to the determination of unlawfulness. We find, based on the language of the statute, that this is the balance between consumers and carriers that Congress struck when it required eligible streamlined tariffs to be deemed lawful.

21. Further, section 204(a)(3) does not mean that tariff provisions that are deemed lawful when they take effect may not be found unlawful subsequently in section 205 or 208 proceedings.[66] No language in section 204(a)(3) states or requires us to infer such a limitation, nor is there any legislative history suggesting such a limitation. As the 1996 Act did not amend sections 205 or 208, nor refer to them in amending section 204, it did not limit our authority either to conduct tariff investigations under section 205 or to process complaint proceedings commenced under section 208. In fact, the language of section 205, which was not changed by the 1996 Act, makes clear that the Commission may find that a rate "is or will" be in violation of the Act and prescribe "what will be the just and reasonable charge" for the future. The "deemed lawful" language in section 204(a)(3) changes the current regulatory scheme only by immunizing from challenge those rates that are not suspended or investigated before a finding of unlawfulness. It does nothing to change the Commission's ability to prescribe rates as to the future under section 205 or to find under section 208 that a rate will be unlawful if charged in the future. Even where the agency has made an affirmative finding of lawfulness, which would not be the case where a tariff has become effective without suspension under section 204(a)(3), the tariff remains subject to further review under section 205.[67] Thus, a rate that is "deemed lawful" can also be reevaluated as to its future effect under sections 205 and 208 and the Commission may prescribe a rate as to the future under section 205.

22. In this decision, we do not adopt the view of Pacific Telesis that the phrase "shall be deemed lawful and shall be effective 7 days . . . or 15 days . . . after the date on which it is filed" mandates that a tariff be treated as lawful at the time of filing. In our view, the better reading of section 204(a)(3) is that a streamlined tariff becomes both effective and "deemed lawful" 7 or 15 days after the date on which it is filed. Congress did not amend the

[65] *Arizona Grocery, supra.*

[66] *Cf.* SWBT Comments at 3- 4.

[67] *See* Nader v. FCC, 520 F.2d. 182, 205 (D.C. Cir. 1975).

Act to eliminate the Commission's suspension authority for LEC tariffs and therefore, Congress did not intend that LEC tariffs be deemed lawful when filed. Moreover, it would be illogical if, for example, a tariff could be considered lawful before it even takes effect and while another tariff is already in place.

23. We also conclude that the Commission may find a tariff provision that is "deemed lawful" under section 204(a)(3) to be unlawful at the conclusion of a section 205 investigation or 208 complaint proceeding based on a preponderance of the evidence presented in either proceeding. We currently employ this standard in section 205 and 208 proceedings and find nothing in section 204(a)(3) requiring us to establish a higher evidentiary standard for determining the prospective lawfulness of a streamlined tariff provision. Further, we decline to impose a higher burden as a matter of policy.

24. In adopting the first interpretation of "deemed lawful," we have considered the comments of KMC, ACTA, and TRA, which expressed a concern that adoption of this interpretation would be unfair to small consumers and competitors of LECs.[68] With respect to KMC's concern that the adoption of the first interpretation would make it difficult for small competitors to challenge LEC tariff filings, we note that all parties, including small entities, will have the same opportunity to challenge tariff filings eligible for streamlined regulation before they become effective or to initiate a section 208 complaint proceeding after the filings become effective. These procedures will permit small businesses to participate fully in pre-effective review of LEC tariffs and to obtain a determination of the lawfulness of a LEC tariff after it has gone into effect. Small businesses will be able to protect against this possible impact on them caused by "deemed lawful" treatment of LEC tariffs by participating in the pre-effective tariff review process. In addition, the program of electronic filing of tariffs that we discuss in Section III, D, 1, *infra.* will facilitate participation by small entities in the tariff review process. To the extent that small entities will have greater difficulty than larger entities in participating in the tariff review process, we note that the shortened time period for pre-effective review of LEC tariffs is required by the 1996 Act and that, as explained above, we are compelled by the language in the statute as interpreted by relevant judicial precedent to adopt the first interpretation of "deemed lawful."

C. LEC Tariffs Eligible for Filing on a Streamlined Basis

1. Types of Tariff Filings Eligible for Streamlined Filing

a. Background

25. The first sentence of section 204(a)(3) provides that LECs may file "a new or

[68] *See,* ¶ *17, supra.*

revised charge, classification, regulation, or practice on a streamlined basis."[69] The Notice observed that this suggests that LEC tariff filings that propose any change, including rate increases and decreases, may be eligible for streamlined filing.[70] The second sentence of section 204(a)(3) provides for specified effective dates only for tariffs proposing rate increases or decreases. In the Notice, we tentatively concluded that all LEC tariff filings that involve changes to the rates, terms, and conditions of existing service offerings, regardless of whether they involve a rate increase or decrease, would be eligible for streamlined treatment, with the possible exception of tariffs for new services.[71]

26. Concerning new services, the Notice asked whether the phrase "a new or revised charge" included tariffs introducing entirely new services or whether the word "new" refers only to new charges, classifications, regulations, or practices for existing services. The Notice therefore solicited comment on whether section 204(a)(3) applies to new or revised charges associated with existing services, but not to charges associated with new services. The Notice stated that this approach may be preferable as a matter of policy, to the extent permissible under the statute, because it would permit the Commission and interested parties greater opportunity to review tariffs that propose to introduce new services since those filings are more likely to raise sensitive pricing issues than revisions to tariffs for services that have already been subject to review. [72]

b. Comments

27. The LECs, Ad Hoc, TRA, Sprint, USTA, AT&T, National Exchange Carrier Association (NECA), and GSA support our tentative conclusion that the streamlining provisions of the 1996 Act apply to tariffs proposing changes to a rate, term, or condition as well as to rate increases and decreases.[73] Generally, these commenters contend that almost any change in the terms and conditions of an existing service, regardless of whether the change involves a rate increase or decrease, will affect the overall rate or cost to the consumer and therefore should be subject to streamlining. Ameritech contends that the plain meaning of the first sentence of section 204(a)(3) clearly states that LECs may file a new or revised charge, classification, regulation, or practice on a streamlined basis. Ameritech concludes from this language that Congress intended streamlining to apply to all tariff revisions, not just those

[69] 47 U.S.C. § 204(a)(3).

[70] Notice at para. 16.

[71] *Id.* at para. 17.

[72] *Id.* at para. 18.

[73] *See, e.g.*, Ameritech Comments at 10 SWBT Comments at 5; Ad Hoc Comments at 4; TRA Comments at 7; Sprint Comments at 5; USTA Comments at 4; GSA Comments at 7.

involving rate increases or decreases.[74] While AT&T and NECA agree with the Commission's tentative conclusion that streamlining should apply to changes in rates, terms, and conditions of existing services, as well as to rate increases and decreases, they note that the statute does not specify time periods for consideration of suspension or deferral in the case of changes to a "classification, regulation, or practice" to an existing service. AT&T recommends that the Commission require LECs to file such tariffs thirty days prior to the tariff's proposed effective date.[75] NECA suggests that the Commission adopt a rule that permits tariff filings containing only terms and conditions only to be filed on seven days' notice.[76]

28. Time Warner Communications Holdings, Inc. (TW Comm), MCI, and the Association for Local Telecommunications Services (ALTS) disagree with the tentative conclusion in the Notice, arguing that the statute is clear that streamlining applies only to rate increases and decreases to existing services.[77] MCI, for example, argues that changes to terms and conditions should not be eligible for streamlined treatment because the second sentence of section 204(a)(3) applies reduced notice periods only to rate increases or decreases. In addition, MCI contends that, given the LECs' continued market share, there is still a "substantial possibility" that any proposed terms and conditions in LEC tariffs will result in unreasonable discrimination in violation of section 202 of the Act. MCI asserts that proposed changes to LEC tariffs that do not include rate increases or decreases should be subject to more thorough scrutiny than would be possible under the streamlining provisions of the 1996 Act.[78]

29. While the LECs, USTA, the Competitive Telecommunications Association (CompTel), and GTE support the Commission's tentative conclusion that section 204(a)(3) should be construed to include changes to existing rates, they disagree with the Commission's stated inclination to exclude new services from streamlined treatment.[79] NYNEX maintains that the terms "new or revised charge, classification or practice" in section 204(a)(1) are repeated in section 204(a)(3) and that the Commission has consistently interpreted the former section as giving it authority to investigate and impose an accounting order for all types of tariffs, including those for new services and revised rates for existing services. If the

---

[74] Ameritech Comments at 10.

[75] AT&T Comments at 9-10.

[76] NECA Comments at 5.

[77] TW Comm Comments at 6; MCI Comments at 14: ALTS Comments at 4.

[78] MCI Comments at 14.

[79] *See e.g.*, NYNEX Comments at 13-14; Pacific Telesis Comments at 10; USTA Comments at 4; CompTel Comments at 3; BellSouth Comments at 8; Ameritech Comments at 11-13.

Commission interpreted the terms "new" and "revised" for purposes of section 204(a)(3) to exclude tariffs proposing new services, NYNEX argues that it would imply that the Commission does not have authority under section 204(a)(1) to order investigations or conduct complaint proceedings of any tariffs proposing new services.[80] US West argues that streamlining new services will facilitate competition by allowing the LECs to respond quickly to changing market conditions, such as the introduction of new services by their competitors, and to reward innovation.[81] Ameritech and USTA further argue that it would not be in the public interest to permit LECs' competitors, but not the LECs, to introduce new services on an expedited basis.[82] GTE maintains that, when the first two sentences of the statute are considered together, it is clear that tariffs proposing new services, as described in the first sentence, are to be afforded the streamlined treatment described in the second sentence.[83]

30. A number of commenters believe that new services should be excluded from eligibility for streamlined treatment.[84] ALTS argues that tariffs for new services should not be eligible for streamlined treatment because they do not involve changes in rates and they are more likely to raise policy questions than rate changes.[85] MCI takes a similar position, stating that the statute is clear that the streamlining provisions apply only to "a new or revised charge, classification, regulation, or practice" associated with existing services.[86] Both ALTS and MCI maintain that the current 45-day notice period for new services is reasonable and should be retained.[87] Sprint believes that new services are not covered by the streamlining provisions because the word "new" in the statute does not modify or relate to a new service, but rather relates to a new charge, term, condition, or practice for an existing service. In addition, Sprint maintains that charges for new services are neither rate reductions nor rate increases and, thus, are not eligible for streamlining under the language of the statute.[88] Ad

[80] NYNEX Comments at 12-3; *See also* Pacific Telesis Comments at 8-11; BellSouth Comments at 8; SWBT Comments at 6-7.

[81] US West Comments at 9.

[82] Ameritech Comments at 10; USTA Comments at 5.

[83] GTE Comments at 15-6.

[84] TRA Comments at 7; GSA Comments at 8; MFS Comments at 2- 3; CompTel Comments at 3; MCI Comments at 15.

[85] ALTS Comments at 6.

[86] MCI Comments at 15. *See also*, AT&T Comments at 9-10; GSA Comments at 7; Sprint Comments at 4.

[87] MCI Comments at 15; ALTS Comments at 6.

[88] Sprint Comments at 5.

Hoc asserts that, because LECs have market power, the Commission should construe the statute narrowly to ensure that LEC tariffs for new services are thoroughly reviewed.[89] GSA is in favor of excluding new services from streamlining because of the complexity of new service offerings. GSA supports a policy of giving such tariffs a higher level of scrutiny.[90]

c. Discussion

31. We find that all LEC tariffs involving rate increases, decreases, and/or changes to the rates, terms, and conditions of existing services are eligible for streamlining. We also conclude that LEC tariffs introducing new services are eligible for streamlined filing. Making all LEC tariffs eligible for streamlining will provide a consistent reading of section 204(a)(3) and section 204(a)(1) by establishing that all tariff filings are subject to the provisions of section 204. We agree with NYNEX that we have consistently interpreted section 204(a)(1) as giving the Commission authority to investigate and impose an accounting order on all types of tariffs, including those for new services. Making all LEC tariffs eligible for streamlining will continue this practice as well as give greatest effect to Congressional intent to streamline the LEC tariff process. In addition, we find that this interpretation will simplify the administration of the LEC tariff process by making it unnecessary for the Commission, carriers, or interested persons to determine whether a particular tariff qualifies for streamlining. Accordingly, we determine that all LEC tariffs are eligible for streamlined filing.

2. Optional Nature of LEC Streamlined Tariff Filings

a. Background

32. Section 204(a)(3) states that LECs "may" file under streamlined provisions. In the Notice, we tentatively concluded that LECs may elect to file on longer notice periods than those provided for in section 204(a)(3), but that, if they chose to do so, such tariffs would not be "deemed lawful."[91]

b. Comments

33. SWBT, ALLTEL, USTA, NYNEX, NECA, and GTE disagree with the Commission's tentative conclusion and contend that tariffs should be deemed lawful whether

[89] Ad Hoc Reply Comments at 9-10.

[90] GSA Reply Comments at 8.

[91] Notice at para. 19.

or not they are filed on a streamlined basis.[92] USTA and SWBT, for example, maintain that, while the statute may give LECs the option to file their tariffs on a streamlined basis, a determination that the tariff is "deemed lawful" is not dependant on whether the LEC filed on a streamlined basis.[93] ACTA and TRA support the Commission's tentative conclusion.[94]

c. Discussion

34. We determine, as set out in the Notice, that LECs may, but are not required to, file tariffs on a streamlined basis. As noted above, the first sentence of section 204(a)(3) states that LECs "may" file a tariff on a streamlined basis. We also interpret this section to mean that, if a LEC chooses not to avail itself of the streamlining provisions, then the tariff would be filed pursuant to the general tariffing requirements set out in section 203 of the Act[95] and governed by the notice periods set out in section 61.58 of our rules.[96] In addition, LEC tariffs filed outside the scope of section 204(a)(3) shall not be "deemed lawful" because, by definition, they are not filed pursuant to that section and are not, therefore, accorded the treatment provided for in that section. We also conclude that we may exercise our deferral authority with respect to such tariffs.

3. Forbearance Authority under Section 10(a) of the Act

a. Background

35. In the Notice, we tentatively concluded that section 204(a)(3) does not preclude the Commission from exercising its forbearance authority under section 10(a) of the Act to establish permissive or complete detariffing of LEC tariffs.[97]

b. Comments

---

[92] SWBT Comments at 7-8; ALLTel Comments at 4; USTA Comments at 7 and Reply Comments at 9; GTE Reply Comments at 11; NECA Comments at 4; NYNEX Comments at 15.

[93] USTA Comments at 7.

[94] ACTA Comments at 8, TRA Comments at 8.

[95] 47 U.S.C. § 203.

[96] 47 C.F.R. § 61.38

[97] Notice at para. 19. The Commission adopted complete detariffing of domestic interstate interexchange services. *Policy and Rules Concerning the Interstate, Interexchange Marketplace: Implementation of Section 254(g) of the Communications Act of 1934, as amended,* CC Docket 96-61, Second Report and Order, FCC 96-424 (rel. October, 31, 1996).

36. Most of the commenters agree with the tentative conclusion set out in the Notice that the Commission has forbearance authority to reduce or eliminate filing requirements for LEC tariffs.[98] Pacific Telesis believes that the Commission has forbearance authority to remove tariff filing requirements when competition develops to the point where regulation is unnecessary.[99] GSA states that nothing in either section 204(a)(3) or section 10(a) of the 1996 Act restricts the Commission from applying its forbearance authority to LEC tariff filings.[100] CompTel and ACTA, on the other hand, argue that the general provisions of section 10(a) are overridden by the specific language of new section 204(a)(3), which requires LECs to file tariffs. They contend that this interpretation is consistent with general statutory construction principles mandating that specific provisions take precedence over more general ones. They further argue that any interpretation of the statute that gave the Commission authority to eliminate LEC tariff filing requirements entirely would void the new streamlining provisions.[101]

c. Discussion

37. We affirm our tentative conclusion that we may exercise forbearance authority to reduce or eliminate tariff filing requirements for LECs, including the filing of tariffs eligible for streamlined treatment. Section 10(a) accords the Commission general authority to forbear from enforcing almost any provision of the Act applicable to common carriers if specific preconditions are met. The only limitation on this authority is provided in subsection 10(d), which states that the Commission may not forbear from applying certain interconnection requirements on incumbent LECs set out in section 251(c) of the 1996 Act or from authorizing Bell Operating Company interLATA entry pursuant to section 271 of the 1996 Act until "those requirements have been fully implemented."[102] Absent any express limitation on our authority to forbear from applying tariffing requirements of section 203 of the Act, we conclude that we have authority to do so under section 10(a). In addition, we find it difficult to construe section 204(a)(3), which states that LECs "may" file streamlined tariffs, and our section 10 forbearance authority to mean that the statute imposes a requirement that LECs "must" file tariffs. Rather, we find that Congress intended to reduce or eliminate regulation as competition develops and to provide for the detariffing of LEC

---

[98] *See, e.g.*,. Ameritech Comments at 28; NYNEX Comments at 15; USTA Comments at 7; GSA Comments at 8.

[99] Pacific Telesis Comments at 14-5.

[100] GSA Comments at 8.

[101] CompTel Comments at 7, citing *Public Citizen, supra* at 1285; *Mail Carrier, supra* at 515; ACTA Comments at 9. *See also*, SWBT Comments at 8.

[102] 47 U.S.C. §§ 251, 271.

services under appropriate conditions.[103]

4. Applications of Section 204(a)(3) of the Act to Tariff Filings of Nondominant LECs

a. Background

38. As noted above, under the 1996 Act, a LEC is defined as "any person that is engaged in the provision of telephone exchange service or exchange access."[104] The Notice did not address the application of section 204 to nondominant LECs.

b. Comments

39. Several of the commenters assert that the 1996 Act's streamlined tariffing provisions should not apply to nondominant LECs. They argue that there is nothing in the 1996 Act or its legislative history to suggest that Congress intended to increase the current one-day's notice period for nondominant LECs.[105] In any event, MCI asserts that, if the Commission determines that Section 204(a)(3) applies to nondominant LECs, it should forbear from applying Section 204 (a)(3) to nondominant providers of interstate access service that do not have market power.[106]

c. Discussion

40. The statute does not distinguish between incumbent LEC and competitive LECs for purposes of Section 204. Therefore, we conclude that all LECs, including nondominant LECs, to the extent they file tariffs, are eligible to file tariffs on a streamlined basis. At this time, we have not addressed the extent to which nondominant LECs are required to comply with our tariffing rules. Two petitions before the Commission will provide an opportunity for us to do so.[107] As noted above, the statute also provides that LECs "may" file under

---

[103] We note that the present proceeding does not concern whether we should forbear from applying any of the requirements of section 203 to any carriers.

[104] *See* ¶ 2-4, *supra.*

[105] *See, e.g.,* Time Warner Comments at 2-3; MCI Reply Comments at 16; AT&T Comments at 4.

[106] MCI Reply Comments at 15-16.

[107] On March 21, 1996, Hyperion Telecommunications, Inc. filed a petition requesting that the Commission forbear from imposing the Commission's tariff filing requirements on competitive access providers. On May 2, 1996, Time Warner filed a similar petition on behalf of nondominant local exchange and exchange access providers.

streamlined provisions. We have interpreted this section to mean that LECs may choose to use these streamlined provisions, but that tariffs filed outside of the scope of these provisions are governed by the general tariffing provisions of section 203.[108] Accordingly, we also conclude that Section 204(a)(3) does not limit the ability of nondominant LECs to file tariffs on one-day's notice under section 61.23(c) of our rules.[109] We also conclude that such tariffs would not be eligible for "deemed lawful" treatment, but that such tariffs would continue to enjoy the presumption of lawfulness accorded all nondominant carrier filings under section 1.773(a)(ii) of our rules.

D. Streamlined Administration of LEC Tariffs

1. Electronic Filing

a. Background

41. In the Notice, we proposed establishing a program for electronic filing of tariffs and associated documents. We sought comment on: (a) whether or not to establish an electronic filing program; (b) whether such a system should be operated by the Commission or carriers; (c) whether tariffs should be filed in a specified database format; and (d) what system security measures should be adopted.[110]

b. Comments

42. Nearly every commenter supports establishing an electronic filing system. Many commenters suggest, however, that, before we implement a mandatory system of electronic filing, we initiate either an industry working group or issue a further Notice to ensure the security of the program and to discuss its functional requirements.[111] Sprint asserts that the industry is not ready to participate in an electronic filing system because there are no industry standards regarding systems, format, or software.[112] There is also disagreement

---

[108] *See ¶ 2-4 supra.*

[109] 47 C.F.R. § 61.23(c).

[110] Notice at paras. 21-22.

[111] See, e.g., NYNEX Comments at 16-17; Bell Atlantic Reply Comments at 9; USTA Comments at 8-9 and USTA Reply Comments at 9-10; Sprint Comments at 5-6 and Sprint Reply Comments at 7; ALLTEL Comments at 4; Communications Image Technologies, Inc. (CITI) Comments at 3; BellSouth Comments at 8-10; TW Comm Comments at 8; Pacific Telesis Reply Comments at 14; MCI Reply Comments at 16-17.

[112] Sprint Comments at 5-6.

regarding whether participation in the system should be mandatory or not.[113] None of the commenters includes a precise time frame for implementing such a system, although Frontier Corp. (Frontier) states that it should be implemented before the LEC streamlining provisions take effect.[114]

43. Commenters are divided on who should design and maintain the system. Some commenters support having the Commission maintain and control the system.[115] Other commenters support a system designed by the Commission but run by carriers subject to Commission oversight over access and security.[116] MFS and McLeod Telemanagement, Inc. (McLeod) suggest that a third-party contractor should maintain the system.[117]

44. Most commenters advocate the use of an Internet-based system.[118] Some of these commenters support a system of dial-up access in addition to the Internet-based system.[119] USTA favors utilization of the World Wide Web over the use of bulletin boards or dial-in databases. It argues that bulletin boards are slower than the World Wide Web, and dial-in databases require specific software, which are difficult to administer.[120] Ameritech, BellSouth, and CITI propose specific systems,[121] such as EDGAR, the electronic filing system of the SEC.[122] NYNEX, SWBT, and ACTA propose that the Commission post notices of tariff filings on its Web page, which would be linked to LEC Web pages where the LECs

---

[113] Ameritech Reply Comments at 17-18; GTE Comments at 21-22 (favoring mandatory electronic filing); USTA Comments at 8-9 (opposing mandatory electronic filing).

[114] Frontier Comments at 15.

[115] National Telephone Cooperative Association (NTCA) Reply Comments at 3-4; AT&T Comments at 14-15; Ameritech Comments at 23-25 and Reply Comments at 17-18; Bell Atlantic Comments at 7; MFS Comments at 6; CBT Comments at 9.

[116] Ad Hoc Comments at 6-7; Sprint Comments at 5-6; NECA Comments at 7; GSA Comments at 9-10; ACTA Comments at 9.

[117] MFS Comments at 9; McLeod Comments at 7.

[118] NYNEX Comments at 16-17; Pacific Telesis Comments at 16; AT&T Comments at 14-15; USTA Comments at 8-9; Ameritech Comments at 23-25; GTE Comments at 21-22; NECA Comments at 7; MFS Comments at 9; BellSouth at 8-10.

[119] Ameritech Comments at 23-25; NECA Comments at 7; BellSouth Comments at 8-10.

[120] USTA Comments at 8-9.

[121] Ameritech Reply Comments at 17-18; BellSouth Comments at 8-10.

[122] CITI Comments at 5.

would post their tariffs.[123] USTA proposes a system with company-specific sections on the FCC's Web page.[124] NECA proposes that the Commission set up separate servers for providing information and posting of tariffs for public review, which would permit anonymous log-ons to the public server.[125]

45. Ameritech suggests that the system adopted by the Commission should accommodate multiple platforms and software packages rather than specify a database that would require re-drafting tariffs into a standardized system.[126] GSA and CITI, however, contend that the Commission should prescribe a standardized format for tariff filings.[127] AT&T and USTA suggest that the system be structured to allow carriers to download tariffs in spreadsheet formats and as ASCII text files.[128]

46. Many commenters suggest methods to prevent unauthorized changes to tariffs, such as using: password or PIN number protection;[129] electronic signatures;[130] and encryption devices.[131] NTCA recommends that the Commission ensure that a permanent record of historically filed tariffs is maintained.[132] Ad Hoc and AT&T urge that the notice period not begin to run until the filing is posted.[133] GSA and AT&T propose that we establish a return receipt confirmation to specify the date of filing and commencement of the notice period.[134] Several commenters urge the Commission to require that filings be posted on the system at a

[123] NYNEX Comments at 16-17; SWBT Comments at 9-11; ACTA Comments at 9.

[124] USTA Comments at 8-9.

[125] NECA Comments at 7.

[126] Ameritech Comments at 24; *see also* Ad Hoc Reply Comments at 11-12; Sprint Reply Comments at 7.

[127] GSA Comments at 9-10; CITI Comments at 4-5; *see also* AT&T Comments at 14-15.

[128] AT&T Comments at 14-15; USTA Comments at 8-9.

[129] NECA Comments at 7; SWBT Comments at 9-11.

[130] CITI Comments at 4.

[131] Pacific Telesis Reply Comments at 14.

[132] NTCA Reply Comments at 3-4.

[133] Ad Hoc Reply Comments at 11-12; AT&T Comments at 14-15.

[134] GSA Comments at 9-10; AT&T Comments at 14-15.